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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )

Petition of U S WEST Communications, )  
Inc. for a Declaratory Ruling Regarding )  
the Provision of National Directory )  
Assistance )

CC Docket No. 97-172

REPLY COMMENTS OF AT&T CORP.

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## TABLE OF CONTENTS

SUMMARY . . . . .	1
ARGUMENT . . . . .	3
I.    U S WEST's National Directory Assistance Service Violates Section 271. . . . .	3
II.   To the Extent It May Provide National Directory Assistance Service, U S WEST Must Satisfy Section 251's Unbundling and Nondiscrimination Requirements. . . . .	10
CONCLUSION . . . . .	12

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**REPLY COMMENTS OF AT&T CORP.**

Pursuant to the Commission's Public Notice seeking comment, DA 97-1634, released on August 1, 1997, and Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") hereby replies to the comments of other parties<sup>1</sup> on the Petition of U S WEST Communications, Inc. ("U S WEST") for a Declaratory Ruling Regarding the Provision of National Directory Assistance.

**SUMMARY**

AT&T demonstrated in its opening comments that U S WEST's provision of national directory assistance service is not permitted by section 271 of the Communications Act, as amended by the Telecommunications Act of 1996. As described by U S WEST, the service undeniably is an in-region interLATA

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<sup>1</sup> A list of parties submitting comments and the abbreviations used to identify them is attached hereto as Appendix A.

telecommunications service, and is not permitted by any provision of the Act.

The BOCs contend that national directory assistance service is permitted under section 271, but theirs is a cramped reading of the Act which has no basis in either its text or history. U S WEST provides interLATA transport in connection with its national directory assistance service at three stages, and this interLATA transport was forbidden under the MFJ and is therefore not permitted under section 271(f) of the Act (or any other provision of the Act). As both AT&T and MCI established, section 271 clearly encompasses these services and provides U S WEST no basis for offering them at this time. In this and other regards, the BOCs are attempting to offer in-region interLATA services, before receiving Commission approval to do so, based on an unjustifiably narrow reading of section 271(a) and an overbroad reading of the "official services" permitted to them under the MFJ and section 251(f).

Moreover, AT&T established in its opening comments that, should the BOCs be permitted to offer in-region national directory assistance service, they and other ILECs may do so only by complying with the fundamental unbundling and nondiscrimination requirements of section 251. No party's opening comments disputes these contentions. As AT&T has shown, ILECs must make available all three parts of any national directory assistance service on a nondiscriminatory basis to any requesting carrier: (1) access to 411 dialing; (2) access to

national directory assistance listings; and (3) access to the national directory assistance service itself. As the Commission has recognized in its N11 Order and elsewhere, such unbundling is necessary for other carriers to compete with the incumbent LECs.

## **ARGUMENT**

### **I. U S WEST's National Directory Assistance Service Violates Section 271.**

As both AT&T and MCI established in their opening comments, U S WEST's service -- as U S WEST itself describes that service -- undeniably provides in-region interLATA transport, and hence in-region interLATA services, in three ways.<sup>2</sup> First, U S WEST transports calls to its centralized operators across LATA boundaries. Second, U S WEST may transfer a caller to a different operator across LATA boundaries. Third, U S WEST operators may place database queries across LATA boundaries to retrieve national numbers.

U S WEST and the BOCs deny none of this. Rather, U S WEST and the other BOCs offer three arguments: First, they contend that calls to directory assistance are not "telecommunications" because they do not involve "transmission" between "points specified by the user." Second, they contend that even if U S WEST is providing interLATA telecommunications (and therefore interLATA services forbidden under section 271(a)), national directory assistance would have fallen within

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<sup>2</sup> AT&T, p. 4; MCI, pp. 3-4.

the MFJ's permission of "official services" and therefore is permitted under section 271(f). Both of these arguments are baseless. A call to 411 must be considered "telecommunications," notwithstanding that the caller does not know the street address of the operator taking the call. It is, in this regard, no different from an 800 or 900 call. Moreover, the Decree Court specifically found that BOC provision of directory assistance numbers outside of the caller's own LATA violated the Decree. When these arguments are disposed of, it is clear that the third argument offered by U S WEST and the other BOC commenters -- that the scope of section 271(a)'s restriction on interLATA services is narrower than the MFJ's interexchange services prohibition -- is both erroneous and irrelevant.

First, advancing an argument not presented in U S WEST's petition, two BOC commenters contend that interLATA transport from callers to centralized U S WEST operators is not "interLATA telecommunications" as "telecommunications" are defined by section 3(43) of the Act, because the calls are not carried between "points specified by the user."<sup>3</sup> This argument is sophistry. The customer dials "411," thus specifying that the call be carried to the directory assistance operator. Ameritech and BellSouth suggest that because the user does not know whether that operator is in the LATA or outside it (and, in fact, probably has no idea of the location of the operator at all), the user has not "specified" the point to which the call should be

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<sup>3</sup> Ameritech, pp. 2-3; BellSouth, p. 7.

delivered. This argument defies common sense, as dialing 411 is "specifying" the place the call should be delivered. If this argument were credited, then 800- and 900- calls, for which the caller generally will not know the location called, as well as any call for which the caller dials a number without knowing the street address of the called party, would have to be deemed not to be telecommunications services.

In any event, this argument has no application to the other interLATA elements of U S WEST's national directory assistance. A U S WEST operator transferring a call to another U S WEST operator, or a U S WEST operator making a database inquiry, certainly specifies the location of the other operator or database. If the call crosses LATA boundaries, it has been directed to that specific location by the U S WEST operator and its transport is the provision of interLATA telecommunications.

Second, the BOC commenters contend, as U S WEST did in its Petition, that national directory assistance service is permitted by section 271(f) of the Act because it would have been a permissible "official service" under the MFJ.<sup>4</sup> As AT&T demonstrated in its opening comments, the official services exception was always "narrowly" construed under the MFJ and was specifically limited to the four itemized services offered by the BOCs in 1983.<sup>5</sup> National directory assistance service was not one of those services.

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<sup>4</sup> Ameritech, p. 4; Bell Atlantic, pp. 3-4.

<sup>5</sup> See AT&T, pp. 6-7.

Moreover, as MCI demonstrates,<sup>6</sup> national directory assistance service was specifically held by the Decree Court to be outside the official services category and was, instead, a service to be provided by the IXC's. In 1984, the U S WEST companies Northwestern Bell, Mountain Bell, and Pacific Northwest Bell asked the Decree Court for a declaration that the Decree permitted them to offer directory assistance in such a way that callers could receive numbers outside of the NPA and LATA in which the caller was located, or alternatively for a waiver of the Decree.<sup>7</sup> The Department of Justice recognized such calls as interLATA and opposed the request:

The Department would thus oppose waivers to allow the BOCs to provide directory assistance directly over their own facilities (as opposed to providing the service to interexchange carriers pursuant to exchange access tariffs) where the number sought is outside the NPA (and the LATA) of the person making the calls, except to the extent that such service was provided to independent telephone companies prior to divestiture.<sup>8</sup>

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<sup>6</sup> MCI, p. 9.

<sup>7</sup> See Motion and Memorandum in Support for Declaratory Ruling or in the Alternative for a Waiver in Regard to Certain Operator Services, United States v. Western Elec. Co., D.D.C. No. 82-0192 (filed Feb. 27, 1984).

<sup>8</sup> Response of the United States to the Motion of the U S WEST Operating Companies Regarding the Provision of Directory and other Operator Services to Independent Telephone Companies, United States v. Western Elec. Co., D.D.C. No. 82-0192, pp. 4-5 (filed March 8, 1984).



AT&T also opposed the request because such services constituted interLATA services and were then being provided by interexchange carriers.<sup>9</sup>

The Decree Court denied U S WEST's motion in relevant part.<sup>10</sup> The Court found that "[t]he arguments of the Department of Justice and of AT&T are well taken."<sup>11</sup> It wrote:

AT&T is currently providing (and other interexchange carriers can similarly provide) inter-LATA directory assistance by using directory information provided by US West pursuant to its access tariffs. Thus, callers who are outside not only the NPA (and LATAs), but also outside the States served by US West would presumably not be inconvenienced if directory assistance is provided over the facilities of an interexchange carrier rather than those of the US West Operating Companies.<sup>12</sup>

All of this establishes that, under the Decree, the provision of directory assistance to callers seeking numbers outside their LATAs was an IXC service under the MFJ.<sup>13</sup> Ameritech's assertion to the contrary is simply incorrect.<sup>14</sup>

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<sup>9</sup> AT&T Response to Motion of Northwestern Bell, Mountain Bell and Pacific Northwest Bell in Regard to Certain Operator Services, United States v. Western Elec. Co., D.D.C. No. 82-0192 (filed March 12, 1984).

<sup>10</sup> Memorandum Order, United States v. Western Elec. Co., No. 82-0192 (D.D.C., Oct. 30, 1984).

<sup>11</sup> Id. at 4.

<sup>12</sup> Id. at 4-5 (footnote omitted).

<sup>13</sup> The October 30, 1984 Order provided a limited exception: the provision to callers of numbers in the same NPA, even if outside the caller's LATA, where such service was provided prior to divestiture.

<sup>14</sup> Ameritech, pp. 4-5.

Although this is a seemingly minor piece of Decree history, U S WEST has been reminded of it on several occasions, although it neglected to refer to it in its Petition. Following the 1989 Decree enforcement proceedings against U S WEST and the entry of the Civil Enforcement Consent Order with the Department of Justice,<sup>15</sup> U S WEST notified the Minnesota Public Utilities Commission that its provision of directory assistance on a "statewide" basis violated the MFJ and that it would modify the service to bring it into compliance: "This means that [Northwestern Bell] will provide DA to customers only within their home NPA. Requests for DA outside of a customer's NPA will be handled through an Interexchange Carrier (IEC)."<sup>16</sup> Similarly, just before the 1996 Act was passed, U S WEST acknowledged that the October 30, 1984 order permitted U S WEST to offer directory assistance service across LATAs only where the service was offered prior to divestiture and the caller requested a number in the same NPA.<sup>17</sup>

Thus, it is clear that the Decree Court specifically considered the crucial aspect of U S WEST's national directory assistance service -- the provision of numbers outside the

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<sup>15</sup> Civil Enforcement Consent Order, United States v. Western Elec. Co., No. 82-0192 (D.D.C., Feb. 1, 1989).

<sup>16</sup> Northwestern Bell Tel. Co. filing entitled "Modified Final Judgment Compliance Filing for Directory Assistance" (filed with Minnesota PUC, Feb. 22, 1989).

<sup>17</sup> See Motion of U S WEST, Inc. for a Waiver Allowing it to Continue To Provide Directory Assistance Services in Colorado as it has Prior to and Since Divestiture (filed with DOJ on Jan. 9, 1996).

caller's LATA -- and found that it was not permitted by the Decree, even as an "official service." It is therefore not permitted under section 271(f) of the 1996 Act.

Third, that U S WEST's service is not an "official service" and would not have been permitted under the MFJ makes irrelevant U S WEST's argument, echoed by most of the commenting BOCs,<sup>18</sup> that the scope of section 271's prohibition on BOCs' providing "interLATA services" is different from and narrower than the MFJ's prohibition of interexchange telecommunications services. U S WEST provides in-region interLATA transport at three points in the provision of the service: that interLATA transport violates the explicit terms of the Act, and is not authorized by section 271(f) or any other provision of the Act.

Nevertheless, as both AT&T and MCI demonstrated in their opening comments,<sup>19</sup> section 271's prohibition on in-region interLATA services is coextensive with the MFJ's interexchange proscription, except where the Act or FCC order pursuant to the Act specifically authorizes BOC interLATA services. Although the BOCs have made arguments to the contrary,<sup>20</sup> they have provided nothing new and certainly have provided nothing to suggest that Congress intended to work such a radical change in the in-region activities permitted to the BOCs without a single comment. As

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<sup>18</sup> Ameritech, p. 2; Bell Atlantic, p. 2; BellSouth, pp. 4, 7.

<sup>19</sup> AT&T, pp. 9-11; MCI, pp. 11-12.

<sup>20</sup> See Ameritech, p. 2; Bell Atlantic, p. 2; BellSouth, p. 4.

AT&T noted, in its proceedings under the 1996 Act the Commission has always regarded the restrictions as identical.<sup>21</sup>

**II. To the Extent It May Provide National Directory Assistance Service, U S WEST Must Satisfy Section 251's Unbundling and Nondiscrimination Requirements.**

As AT&T demonstrated in its opening comments (pp. 11-14), to the extent U S WEST may lawfully offer its national directory assistance service prior to receiving section 271 authorization (as AT&T believes it may not), sections 251(b)(3) and 251(c)(3) require U S WEST to unbundle that service to provide access to the elements of it on a nondiscriminatory basis. Thus, to the extent it is permitted to offer national directory assistance service, U S WEST is required to offer: (1) 411 dialing, (2) the underlying database information, and (3) the national directory assistance service to any requesting carrier on a nondiscriminatory basis. These obligations are entirely independent of whether national directory assistance service is an enhanced service.

Among the commenters, only Roseville addresses this issue, albeit somewhat indirectly, and even it does not contend that national directory assistance falls outside of section 251's unbundling and nondiscrimination provisions. Roseville argues, without providing any support for its claims, that LEC provision of national directory assistance service will promote competition for such services, suggesting that such services are not

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<sup>21</sup> See AT&T, p. 11 & n.4.

currently competitive.<sup>22</sup> Many interexchange carriers offer national directory assistance services, and the long distance market is undeniably competitive.

What Roseville ignores, however, is that ILEC provision of national directory assistance services using 411 dialing or another abbreviated dialing arrangement would be anticompetitive, unless there were access to those same dialing arrangements, nondiscriminatory access to directory information, and wholesale provision of the service itself on a nondiscriminatory basis. As the Commission recognized in its N11 Order<sup>23</sup> and in the Second Report and Order in CC Docket No. 96-98,<sup>24</sup> ILECs would gain a significant competitive advantage were they the only carriers able to provide services through abbreviated dialing arrangements such as 411 and 555-1212.

The Commission therefore should make clear that, under section 251(b), U S WEST must offer N11 dialing parity and that, pursuant to section 251(c), U S WEST must unbundle and offer both its underlying national directory service information and its

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<sup>22</sup> Roseville, pp. 7-8.

<sup>23</sup> The Use of N11 Codes and Other Abbreviated Dialing Arrangements, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket 92-107, FCC No. 97-51 (Feb. 19, 1997).

<sup>24</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98, FCC No. 96-333, at ¶ 151, rev'd in part on jurisdictional grounds, California v. FCC, No. 96-3519 (8th Cir., Aug. 22, 1997).

national directory assistance service on a nondiscriminatory basis to all requesting carriers.


#### CONCLUSION

The Commission should find that U S WEST's national directory assistance service is not permitted under section 271 of the Act. In addition to ruling on the section 271 issue, the Commission should find that national directory assistance service may not be provided unless it is unbundled and provided to any requesting carrier on a nondiscriminatory basis under section 251 of the Act.

Respectfully submitted,

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September 17, 1997

**APPENDIX A**

**LIST OF COMMENTERS**  
**CC Docket 97-172**

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AT&T Corp. ("AT&T")

Bell Atlantic

BellSouth Corporation ("BellSouth")

MCI Telecommunications Corporation ("MCI")

Roseville Telephone Company ("Roseville")

Southwestern Bell Telephone Company, Pacific Bell,  
and Nevada Bell ("SWBT")

**CERTIFICATE OF SERVICE**

James B. Speta, an attorney, by this means certifies that he caused copies of the foregoing Reply Comments of AT&T Corp., to be served upon the persons listed on the attached service list by first-class mail on September 17, 1997, and on this same date by hand upon:

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A handwritten signature in cursive script, reading "James B. Speta", followed by a horizontal line.



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